

ASSEMBLY BILL

No. 2789

Introduced by Assembly Member Leslie

February 20, 2004

An act to amend Section 12104 of the Financial Code, relating to proraters.

LEGISLATIVE COUNSEL'S DIGEST

AB 2789, as introduced, Leslie. Proraters.

The Check Sellers, Bill Payers and Proraters Law exempts a nonprofit community service organization from the provisions regulating proraters if certain criteria are met.

This bill would make nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12104 of the Financial Code is amended
2 to read:
3 12104. A nonprofit community service organization that
4 meets all of the following criteria shall be exempt from any
5 requirements imposed on proraters pursuant to this division:
6 (a) The nonprofit community service organization
7 incorporates in this state or any other state as a nonprofit
8 corporation and operates pursuant to either the Nonprofit Public
9 Benefit Corporation Law, Part 2 (commencing with Section 5110)
10 of Division 2 of Title 1 of the Corporations Code or the Nonprofit

1 Mutual Benefit Corporation Law, Part 3 (commencing with
2 Section 7110) of Division 2 of Title 1 of the Corporations Code.

3 (b) The nonprofit community service organization limits its
4 membership to retailers, lenders in the consumer credit field,
5 educators, attorneys, social service organizations, employer and
6 employee organizations, and related groups that serve educational,
7 benevolent, fraternal, religious, charitable, social, or reformatory
8 purposes.

9 (c) The nonprofit community service organization has as its
10 principal functions the following:

11 (1) Consumer credit education.

12 (2) Counseling on consumer credit problems and family
13 budgets.

14 (3) Arranging or administering debt management plans. “Debt
15 management plan” means a method of paying debtor’s obligations
16 in installments on a monthly basis.

17 (4) Arranging or administering debt settlement plans. “Debt
18 settlement plans” means a method of paying debtor’s obligations
19 in a negotiated amount to each creditor on a one-time basis.

20 (d) The nonprofit community service organization receives
21 from a debtor no more than the following maximum amounts to
22 offset the organization’s actual and necessary expenses for the
23 services described in subdivision (c): a one-time sum not to exceed
24 fifty dollars (\$50) for education and counseling combined in
25 connection with debt management or debt settlement services; and
26 for debt management plans, a sum not to exceed 6.5 percent of the
27 money disbursed monthly, or twenty dollars (\$20) per month,
28 whichever is less, and for debt settlement plans a sum not to exceed
29 15 percent of the amount of the debt forgiven for negotiated debt
30 settlement plans. Nonprofit community service organizations
31 shall not require any upfront payments or deposits on debt
32 settlement plans and may only require payment of fees once the
33 debt has been successfully settled. For purposes of this
34 subdivision, a household shall be considered one debtor. The fees
35 allowed pursuant to subdivision (d) of Section 12104 shall be the
36 only fees that may be charged by a nonprofit community service
37 organization for any services related to a debt management plan or
38 a debt settlement plan.

39 (e) The nonprofit community service organization maintains
40 and keeps current and accurate books, records, and accounts

relating to its business in accordance with generally accepted accounting principles, and stores them in a readily accessible place for a period of no less than five years from the end of the fiscal year in which any transactions occurred.

(f) The nonprofit community service organization deposits any money received from a debtor for the services described in subdivision (c) in a noninterest-bearing trust account in a federally insured state or federal bank, savings bank, savings and loan association, or credit union. The nonprofit community service organization shall provide the commissioner the following prior to engaging in business in this state and claiming this exemption:

(1) A written notice with the name, address, and telephone number of the bank, savings bank, savings and loan association, or credit union where the trust account is maintained, and the name of the account and the account number. The account information required in this paragraph shall be kept confidential pursuant to the laws governing disclosure of public records, including the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, and the rules adopted thereunder.

(2) An irrevocable written consent providing that upon the commissioner taking possession of the property and business of the nonprofit community service organization, all books, records, property and business, including trust accounts and any other accounts holding debtors' funds, shall be immediately turned over to the commissioner or receiver appointed pursuant to this division. The consent shall be signed by the nonprofit community service organization and the bank, savings bank, savings and loan association, or credit union where the trust account is maintained. The consent shall be binding upon the nonprofit community service organization and the bank, savings bank, savings and loan association, or credit union, and any objection to it must be raised pursuant to the laws of the State of California and only in the forum in which the proceeding to take possession or appointment of the receiver has been filed. The nonprofit community service organization and the bank, savings bank, savings and loan association, or credit union shall further consent to the jurisdiction of the commissioner for the purpose of any investigation or proceeding under Sections 12105 and 12106 or any other provision of this division. The consent required by this paragraph

1 shall include the name, title, and signature of an official of the
2 bank, savings bank, savings and loan association, or credit union
3 holding the authority to consent on behalf of such institution, and
4 the name, title, and signature of the chief executive officer or
5 president of the nonprofit community service organization.

6 (g) The nonprofit community service organization maintains at
7 all times a surety bond in the amount of twenty-five thousand
8 dollars (\$25,000), issued by an insurer licensed in this state. The
9 bond shall be conditioned upon the obligor faithfully conforming
10 to and abiding by the provisions of Section 12104 of the Financial
11 Code, honestly and faithfully applying all funds received, honestly
12 and faithfully performing all obligations and undertakings
13 required under this section, and paying to the state and to any
14 person all money that becomes due and owing to the state or to any
15 person owed by the obligor of the bond.

16 (h) The nonprofit community service organization reports all
17 of the following to the debtor at least once every three months, or
18 upon the debtor's request, for any debt management plan or debt
19 settlement plan:

20 (1) Total amount received from the debtor.

21 (2) Total amount paid to each creditor.

22 (3) Total amount any creditor has agreed to accept as payment
23 in full on any debt owed by the debtor.

24 (4) Any amount paid to the organization by the debtor.

25 (5) Any amount held in reserve.

26 (i) The nonprofit community service organization submits to
27 the commissioner, at the organization's expense, an audit report
28 containing audited financial statements covering the calendar year
29 or, if the organization has an established fiscal year, then for that
30 fiscal year, within 120 days after the close of the calendar or fiscal
31 year.

32 (j) The nonprofit community service organization submits with
33 the annual financial statements required under subdivision (i) a
34 declaration that conforms to Section 2015.5 of the Code of Civil
35 Procedure, is executed by an official authorized by the board of the
36 organization, and that states that the organization complies with
37 this section. The annual financial statements shall also include a
38 separate written statement that identifies the name, address,
39 contact person, and telephone number of the organization.

1 (k) The nonprofit community service organization maintains
2 accreditation by an independent accrediting organization,
3 including either the Council on Accreditation or the International
4 Standards Organization, with sector certification.

5 (l) The nonprofit community service organization does not
6 engage in any act or practice in violation of Section 17200 or
7 17500 of the Business and Professions Code.

8 (m) The nonprofit community service organization inserts the
9 following statement, in not less than 10-point type, in its debt
10 management plan and debt settlement plan agreements:
11 “Complaints related to this agreement may be directed to the
12 California Department of Corporations. This nonprofit
13 community service organization has adopted best practices for
14 debt management plans and debt settlement plans, and a copy will
15 be provided upon request.”

16 (n) The nonprofit community service organization adopts and
17 implements on a continuous basis policies or procedures of best
18 practices that are designed to prevent improper debt management
19 or debt settlement practices and prevent theft and
20 misappropriation of funds. Failure to do the following shall
21 constitute improper debt management or debt settlement practices,
22 as applicable:

23 (1) Obtain counselor certification conducted by a nationally
24 recognized third party certification program that certifies that all
25 of the agency’s counselors receive proper training and are
26 qualified to provide financial assistance prior to performing
27 counseling services in this state.

28 (2) Disburse funds no later than 15 days after receipt of valid
29 funds, or by a scheduled reimbursement date, whichever is the
30 greater amount of time.

31 (3) Transmit funds utilizing electronic payment processing
32 when available.

33 (4) Implement an inception date policy, which shall include an
34 agreement that a consumer’s first disbursement pursuant to a debt
35 management plan shall be received within six weeks of agreeing
36 to the debt management plan service. The debt management plan
37 shall include all items described in subdivision (h) and shall be
38 provided to the consumer at the inception date of the plan. A
39 description of best practices of the agency and of the consumer

1 complaint resources shall be issued no later than the first payment
2 date.

3 (5) Respond to and research any complaint initiated by a
4 consumer within five business days of receipt of the complaint.

5 (6) Prohibit a policy requiring debt management plan
6 consumers from being required to utilize additional ancillary
7 services.

8 (7) Provide consumer access to debt management plan services
9 regardless of the consumer's ability to pay fees related to the debt
10 management plan, lack of creditor participation, or the amount of
11 the consumer's outstanding debt.

12 (o) The nonprofit community service organization provides a
13 copy of the best practices described in subdivision (n) to its debtor,
14 upon request.

15 (p) The nonprofit community service organization resolves in
16 a prompt and reasonable manner complaints from debtors relating
17 to the organization's debt management plans or debt settlement
18 plans.

19 (q) The nonprofit community service organization provides
20 written notice to the commissioner within 30 days of dissolution
21 or termination of engaging in the activities of a prorater, as defined
22 in Section 12002.1.

